

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

3 UNITED STATES OF AMERICA * CRIMINAL NO. H-15-263-1
*
4 VERSUS * Houston, Texas
* March 28, 2016
5 ASHER ABID KHAN * 2:30 p.m.

MOTION HEARING
BEFORE THE HONORABLE LYNN N. HUGHES
UNITED STATES DISTRICT JUDGE

9 For the Government:

10 Mr. Alamdar Shabbir Hamdani
11 Ms. Carolyn Ferko
12 United States Attorney's Office
1000 Louisiana, Suite 2300
Houston, Texas 77002

14 | For the Defendant:

15 Mr. Thomas S. Berg
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18 Suite 400
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20 Court Reporter

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 515 Rusk Avenue
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24 Proceedings recorded by mechanical stenography, produced by computer-aided transcription

1 THE COURT: Thank you. Please be seated.

2 Somebody has to move the trial up a little bit.

3 MR. BERG: Up?

4 THE COURT: To this weekend; start then.

5 Well, let's help me with a little background.

6 You put another aka in the superseding indictment in the
7 caption. It needs nothing like dba, aka, incorporated in
8 Delaware any of those things. They don't belong in the
9 caption.

10 What do you think his real name is?

11 MR. HAMDANI: Your Honor, it's Mohamed Zhubi.

12 THE COURT: Would you just add that in the caption?

13 MR. HAMDANI: Yes, Your Honor.

14 THE COURT: And don't go amending it.

15 I think I know, and I'm sure it's in the
16 superseding indictment, but it's written in "justice
17 department-ese." So I can understand, tell me what the
18 government thinks Mr. Zhubi did.

19 MR. FERKO: Yes, Your Honor. Mr. Zhubi was
20 contacted by Mr. Kahn to facilitate Mr. Khan and Mr. Garcia
21 to ISIS. Eventually, as you know, Mr. Khan came back; but
22 Mr. Khan made sure that Mr. Zhubi and Mr. Garcia got in
23 contact with each other so that Mr. Zhubi could complete the
24 act of getting Mr. Garcia to ISIS, where he in fact, we
25 allege, he actually went.

1 THE COURT: And to the best of your understanding,
2 Zhubi has always been in Turkey or Syria?

3 MR. HAMDANI: That's correct, Your Honor.

4 THE COURT: Do you know anything else about him?

5 MR. HAMDANI: He's in Australia, too. At some point
6 he lived in Australia. But beyond that we know he travels
7 back and forth between Syria and Turkey and probably
8 facilitates other people like he's done before.

9 THE COURT: So he is a recruiter?

10 MR. HAMDANI: Yes, Your Honor, he is.

11 THE COURT: Sort of like a football scout or
12 something?

13 MR. HAMDANI: Sort of like that, Your Honor.

14 THE COURT: All right.

15 MR. BERG: I wonder if the government has him in
16 custody or intends to any time in the near future. And I am
17 perfectly willing to wait.

18 THE COURT: Well, wait. That's my next question.

19 Is my order actively being enforced?

20 MR. HAMDANI: Yes, Your Honor. So we will do -- and
21 I will make sure the writ notes are going to be issued for
22 Mr. Zhubi.

23 Turkey, of course, is a nation that can respond
24 to that. So, yes, we have full intention to get the writ
25 notice issued; and if he comes into Turkey and is able to be

1 arrested by the Turkish authorities, we want that to happen.

2 THE COURT: Turkey has been a very valuable ally of
3 ours for a very long time.

4 MR. HAMDANI: Especially now.

5 THE COURT: The only NATO country with a border with
6 the Soviet Union during the worst of the cold war.

7 Well, if there were no Zhubei, would the
8 government be ready for trial?

9 MR. HAMDANI: Your Honor, I would say this. We just
10 received the lab results from Australia. We just got them in
11 this morning, in fact. I know that's something Mr. Berg
12 definitely wants to see. And he may want to travel to
13 Australia based upon that. I don't know. We got them this
14 morning. But that's something, if I were asked today, I'd
15 say, I just got those, so we'd probably want to have
16 additional time just to be able to have Mr. Berg look at that
17 himself.

18 THE COURT: I don't mind sending Mr. Berg to
19 Australia.

20 MR. HAMDANI: Not at all. I don't mind joining him
21 in Australia.

22 THE COURT: Suits me, too. Getting you back is a
23 different question.

24 MR. BERG: He may not want either of us back.

25 They have delivered to me while I was in trial

1 in another case with Judge Ellison for too many weeks a great
2 deal of new discovery which I just stacked on my desk. I
3 haven't even started to go through it. It's going to take a
4 while.

5 THE COURT: Well, how long is "a while?"

6 MR. BERG: I don't know because I haven't started to
7 decompress.

8 MR. FERKO: And, Your Honor, what that is is we had
9 from the computers that were originally seized these reports
10 that were generated from the searches and from telephones
11 that were seized. So basically we had given him a copy of
12 the hard drive, but I think it basically focuses in on the
13 relevant issues and relevant, you know, things that weren't
14 here for those reports --

15 THE COURT: These are paper copies of some of the
16 data from the computers?

17 MS. FERKO: It's not paper copies. Everything is
18 electronic. In fact, they were given to us on thumb drives,
19 and so we copied the thumb drives on to a DVD. I think in
20 one instance we just handed over the thumb drive because it
21 has that much information on it.

22 MR. HAMDANI: There's a lot of information in Mr.
23 Berg's possession, and we have been handing it over on a
24 rolling basis as we get it.

25 THE COURT: I want you to quit getting it and have

1 gotten it.

2 MR. HAMDANI: Yes, Your Honor. We are getting down
3 that road I believe.

4 MR. BERG: And now we find that Australia just
5 arrived today?

6 MR. HAMDANI: Today.

7 MS. FERKO: Well, we asked for it a long time ago.

8 MR. HAMDANI: It virtually came in at 11:00 a.m.
9 this morning.

10 THE COURT: So do you have an estimate of your
11 availability after having completed your preparation?

12 MR. BERG: After completing prep, which I barely
13 started, I would think it would be late fall because I have
14 got other cases. I have got one with you starting next month
15 which is a repeat of what I just did in Judge Ellison's
16 court.

17 THE COURT: What do you have next month?

18 MR. BERG: We have got a Medicare fraud case set for
19 trial.

20 THE COURT: Which one?

21 MR. BERG: My client is Bagoumian, an Armenian nurse
22 with a whole bunch of doctors involved. It's at the end of
23 the month, and it will take a couple of weeks.

24 THE COURT: No, it won't.

25 MR. BERG: It will. It took five with Judge

1 Ellison, so we know it won't take more than two here.

2 THE COURT: It won't take more than five days.

3 Ferko can try a fraud case in five days.

4 MS. FERKO: We tried one in two, Your Honor.

5 THE COURT: There is not that much information.

6 There is a scheme and there are documents that confirm the
7 scheme that are reliable.

8 MR. BERG: That was my position, and the jury
9 ultimately agreed with me that there wasn't enough
10 information on my guy. We got cut loose. It took five weeks
11 to get there. It's a heads-up.

12 THE COURT: I need to transfer some of my cases to
13 those people who have got enough time to listen to you all
14 for five weeks.

15 First of all, clean, crisp presentation is good
16 for both sides, in my judgment. It's also fair to the jury.
17 They're not there to wallow in the photocopies that the
18 government can produce and to listen to people who really
19 want to get out of their office and come down here and have
20 some excitement in their lives.

21 Was that your case?

22 MR. FERKO: No, Your Honor, no, sir.

23 THE COURT: Who was the other side?

24 MR. BERG: Mr. Balboni.

25 THE COURT: He's good.

1 Is he from Philadelphia?

2 MS. FERKO: I think he's from New York, Your Honor.

3 THE COURT: Something about frying pans and fires.

4 MR. FERKO: He's from Boston. I'm sorry.

5 THE COURT: Are you ready for that one?

6 MR. BERG: For that one I'm ready. But we've been
7 dragging it out. It took about two years to get it there. I
8 think it will go.

9 THE COURT: Apparently I'm ready. We need to have a
10 a heart-to-heart talk with everybody.

11 Now you said something, Mr. Hamdani, about
12 producing more stuff that's coming in?

13 MR. HAMDANI: Yes, Your Honor.

14 THE COURT: Well, why doesn't the government just do
15 it?

16 MR. HAMDANI: Yes -- no. And, Your Honor, as you
17 well know in these kinds of cases -- yes, we will. We will
18 try to get it out and we'll get it done.

19 THE COURT: You know how many people have civilian
20 jobs with the United States government?

21 MR. HAMDANI: A lot.

22 THE COURT: A whole lot.

23 MR. HAMDANI: A whole heck of a lot.

24 THE COURT: The short answer would be "too many."

25 And everybody tells me they're shorthanded

1 every time I ask them to do something with the government.

2 So when the SEC told me what with budget
3 problems and being shorthanded and things that they couldn't
4 get it done, I said: You have 24 hours to file the budgets
5 with the CPA for the last 10 years, the budgets for the
6 Enforcement Division for the last 10 years and the -- what's
7 the term they used, FTE, Full Time Equivalent of employees
8 for those type of things, and then I'll decide whether you're
9 budget crunching.

10 He said: We don't want to do that. I'll
11 withdraw it.

12 Because it's not true. You've got the people.

13 Once the press release is written, frequently
14 the interest wanes for a while because sometimes they like
15 coming to trial even when their presence is not constructive.

16 I think the lawyers at a trial should be paid
17 exactly what the jurors get paid. That would shorten trials
18 enormously.

19 MR. BERG: If I were paid more on the preparation
20 end, it would tend to narrow it down. That might be right.

21 THE COURT: The problem in all cases, there are too
22 many parties, too many claims and too little cogent
23 information.

24 Sometimes the lawyers in a civil trial file
25 7,000 pages of documents.

1 Did you flag the seven ones that are important?

2 No. I just mixed them in with all the rest.

3 That's not right. It's cogeneity.

4 By 2:00 o'clock you get me an assessment, not
5 from you as a lawyer, but I want one of these lawyer
6 bureaucrat people who is responsible for a position to commit
7 to having completed production by then, and I will see if
8 that's reasonable and adjust my order.

9 But when the leaves turn red in the fall,
10 that's actually a Midwestern, Northern expression. When the
11 leaves don't turn in Houston, my wife wanted fall colors so
12 we planted a couple of Maple trees. Unlike in Maine, in
13 Houston they stay green until mid December, turn a really
14 putrid olive drab for three or four weeks and start
15 blossoming again. It does give a lot to rake up, however.

16 And send it to him because I have no idea. I
17 have to have commitment that it all will be done and done
18 right by some date in the relative near future because it's
19 not Mr. Khan's fault that you all didn't decide to indict
20 this guy until lately; and so, he shouldn't be dangling
21 around for another year while the government gets organized.

22 But the phrase sort of caught my fancy
23 linguistically, a "specially designated global terrorist
24 entity."

25 Mr. Hamdani, specially-designated as a modifier

1 needs to be the hyphenated.

2 MR. HAMDANI: I will write that down. Thank you,
3 Your Honor.

4 THE COURT: I don't know. There are so many nouns
5 struck together with one adverb that I -- but "entity" we all
6 know is a meaningful word. You know what you are talking
7 about is an entity.

8 The Al-Furqan, F-u-r-q-a-n, Establishment for
9 Media Production is a terrorist activity?

10 MR. HAMDANI: It's the organization's name. It's an
11 alien site.

12 THE COURT: What does AFE produce, pictures of
13 themselves beheading people?

14 MR. HAMDANI: ISIS is well known for its extravagant
15 media and recruiting process.

16 THE COURT: You work for the government whose
17 principal product is press releases, so don't be talking
18 about extravagant media.

19 MR. HAMDANI: Absolutely, Your Honor.

20 THE COURT: One must be careful about pointing
21 fingers.

22 MR. BERG: When do the leaves turn in Australia?

23 MR. HAMDANI: They have reverse seasons there.

24 MS. FERKO: They're the opposite.

25 MR. BERG: So I have already missed the leaves

1 turning there.

2 MR. HAMDANI: I believe the leaves are turning right
3 now.

4 THE COURT: Eucalyptus in the fall, or spring.
5 August might be a slow time.

6 MR. HAMDANI: Whatever Mr. Berg wants is fine with
7 us, Your Honor.

8 MR. BERG: I want to go away for a --

9 THE COURT: That sentiment is not universal.

10 MR. BERG: I want to go a way for a while.

11 THE COURT: Well, you tell me when you want to go
12 away and --

13 MR. BERG: It's kind of like the end of July and
14 then part of August, I want to go to Spain.

15 THE COURT: Where are you going?

16 MR. BERG: In Spain, the north.

17 THE COURT: I know you can go the last week in July
18 because I am not going to be here.

19 MR. BERG: I would like to protect some.

20 And then seriously, with the other stuff I've
21 got --

22 THE COURT: By 2:00 o'clock Wednesday get me a time
23 that you genuinely want to vacation. I don't care what you
24 do, where you go, with whom you go or anything like that.

25 MR. BERG: I am working on that.

1 THE COURT: But I don't want you to say you are on
2 vacation and sit around and work.

3 MR. BERG: No, I don't either, because I'm going
4 out.

5 THE COURT: For two reasons: One, I want you to
6 work for me if you are going to work, and no breaks would
7 make you crazier than you are. You, too, sort of.

8 MR. HAMDANI: Yeah.

9 THE COURT: Mr. Ferko is thinking.

10 Is there more?

11 Does the United States need anything from the
12 Court in order to decide this?

13 MR. HAMDANI: It does not, Your Honor.

14 THE COURT: Mr. Berg?

15 MR. BERG: I think we're good. I will get you that
16 information.

17 THE COURT: Why don't you run and talk to your
18 client briefly and see if he has any questions.

19 (Mr. Berg consults with client)

20 MR. BERG: He is in school and doing well.

21 THE COURT: Good. Keep it up.

22 MR. BERG: I have a different question.

23 He is about to transfer to U of H, and he
24 wanted to know if it's okay to use the gym and bowling alley
25 there. He's been at Lone Star, but he's about to transfer to

1 U of H central campus, and he wanted to know if it was okay
2 to use the gym and the bowling alley.

3 THE COURT: What do they do in the gym and bowling
4 alley?

5 MR. BERG: They work out and they bowl.

6 THE COURT: Well, that's an assumption on your part.
7 There could be drinking parties or something.

8 Did I tell you not to drink?

9 THE DEFENDANT: Yes, you did.

10 MR. BERG: But he didn't drink anyway.

11 THE COURT: Well, I know, but I would like to
12 reinforce that. I don't either. You can tell him not to
13 drink all you want. I just watch my friends when they do,
14 and that reinforces it.

15 Does the government have a bowling alley rule?

16 MR. HAMDANI: It does not, Your Honor.

17 THE COURT: How about working with weights?

18 MR. HAMDANI: No, Your Honor.

19 MS. FERKO: Your Honor, there is no objection to the
20 gym and to bowling alleys there. I mean, if it's on campus,
21 that's fine.

22 THE COURT: Okay. I don't think we need to make it
23 express, but just on the safe thing we'll make it express
24 that you can go. They're both on campus?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: That's fine. But that's the way to do
2 it. When in doubt, ask. As Mr. Berg first, then your
3 probation second.

4 All right. Anything else?

5 MR. BERG: That's all, Your Honor.

6 THE COURT: All right. Thank you, counsel.

7 MR. HAMDANI: Thank you, Your Honor.

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9

10 (Conclusion of proceedings)

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1 CERTIFICATION
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5 I, Fred Warner, Official Court Reporter for the
6 United States District Court for the Southern District of
7 Texas, Houston Division, do hereby certify that the foregoing
8 pages 1 through 15 are a true and correct transcript of the
9 proceedings had in the above-styled and numbered cause before
10 the Honorable LYNN N. HUGHES, United States District Judge,
11 on the 28th day of March, 2016.

12 WITNESS MY OFFICIAL HAND at my office in Houston,
13 Harris County, Texas on this the 30th day of November, A.D.,
14 2018.

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18
19 /s/ Fred Warner _____
20 Fred Warner, CSR
Official Court Reporter
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